

Texas Public Policy
Foundation



RIGHT
ON CRIME

Getting Criminal Justice Right



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The Texas Public Policy Foundation Portfolio

- Fiscal and tax restraint
- Civil justice reform
- Center for Tenth Amendment Studies
- Deregulation of (over)regulated industries like insurance and utilities.
- Center for Effective Justice launched in March 2005, Right on Crime in Dec. 2010



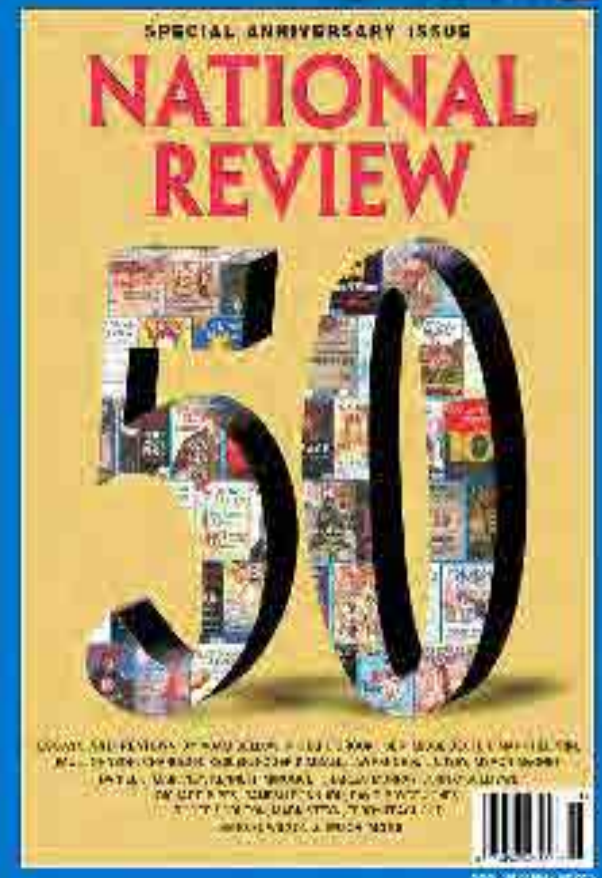
Right on Crime Enters the Field

- Former AG Ed Meese, Speaker Newt Gingrich, Gov. Jeb Bush, Former Drug Czar Bill Bennett, Grover Norquist, and Other Conservative Leaders Endorse Right on Crime Statement of Principles
- Statement Supports Reining in Growth of Non-Traditional Criminal Laws, Cost-Effective Alternatives for Nonviolent Offenders, Emphasis on Restitution and Treatment, and Performance Measures.





Favorably covered in numerous outlets such as:



Getting Criminal Justice Right

- Gov. Reagan in 1971: “Our rehabilitation policies and improved parole system are attracting nationwide attention. Fewer parolees are being returned to prison than at any time in our history, and our prison population is lower than at any time since 1963.”



Regulatory Offenses on the Rise

- ▣ These offenses typically involve ordinary business and recreational activities and no individual victim.
- ▣ States where criminal laws have been counted reveal about 2,000 each in Texas and Arizona.
- ▣ Texas has 11 felonies relating to harvesting oysters.
- ▣ Nearly 20 states have default mens rea provision, including Ohio enacted in 2014.



The Withering Intent Requirement

- ▣ Many of these laws dispense with the traditional requirement of a culpable mental state. For example, of the 83 environmental criminal offenses in Florida, 52 are strict criminal liability offenses.
- ▣ Under federal law, corporate defendants been held strictly criminally liable for deaths of migratory birds.



Penalties Can Be Extreme

- ▣ In Alabama, “disposing of scrap tires in a way not approved by the Environmental Management Act” is a felony punishable by up to ten years in prison, even if no harm.
- ▣ Under the TX. Water Code, “transporting or causing or allowing to be transported for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits” is punishable by up to ten years behind bars, even if the waste is not actually stored at the location that lacks permits and there is no harm.



The Dangers of Delegation

- ▣ Federal and state laws often confer virtually unlimited authority on agencies to effectively create new criminal offenses through their rulemaking.
- ▣ Louisiana RS 30:2421A creates an offense with a one year prison term for “disposing of white goods (appliances) except in a collection or recycling facility in accordance with the rules and regulations of the department.”



Solutions to Rein in Overcriminalization at the State Level



Enact ALEC Model Legislation on Default Mens Rea & Rule of Lenity

- Model default mens rea provision requires that the defendant have a conscious object to engage in conduct of the nature constituting each element of the offense and with either specific intent to violate the law or with knowledge that the person's conduct is unlawful.
- Rule of lenity provision states that if there are two or more objectively reasonable interpretations of a criminal statute and, under one of them the defendant's conduct is not criminal, the benefit of the doubt goes to the defendant.

Reduce and Revise Criminal Laws

- ▣ Stop creating new criminal offenses as a method of regulating non-fraudulent business activities. Regulation is better handled through non-criminal administrative mechanisms and market forces, not the heavy stigma of criminal sanctions.
- ▣ Most new crimes not requested by prosecutors, but often rent seeking to stick a free government lawyer on a competitor



Narrow What's Criminal and Jailable

- ▣ Convert many regulatory misdemeanors into civil violations or, at the least, remove jail time as an option for such offenses, provided that the non-jail penalty is satisfied.
- ▣ Economic conduct should be criminal only when it results in actual harm or danger, except if there is intentional fraud such as Madoff.



Turning to Traditional Crimes: Strengthening Alternatives to Incarceration



Texas' Successful Justice Reinvestment

- ▣ Capacity in programs that offer less costly alternatives to incarceration was expanded and then maintained in subsequent sessions, despite overall budget shortfalls in 2009 and 2011.
- ▣ Parole rate has increased, as Board finds that as more inmates are receiving treatment, more are safe to be released with supervision and fewer parolees committing new crimes.



Texas Trend: Lower Incarceration *and* Crime Rates

Year	FBI Index Crime Rate	Incarceration Rate Per 100k
2005	4,857.1	681
2014	3,425.3	584
Percent Change	-29.5%	-14.2%

- ▣ Texas' crime rate has reached its lowest level since 1968.

*Sources: Bureau of Justice Statistics and
Texas Law Enforcement Agency Uniform Crime Reports*

Problem-Solving Courts

- Drug courts: 34% lower recidivism: should focus on high-risk offenders who would have gone to prison.
- Hawaii HOPE Court with regular testing, treatment as needed, and weekend jail in few cases of non-compliance: 2/3 less re-offending, costs a third of drug court.
- Mental health courts: *Amer. Journal of Psychiatry*: less total & violent re-offending



The Incentive Funding Model: Aligning Goals & Funding

- ▣ Gives counties the option to receive some state funds now spent incarcerating non-violent offenders in exchange for setting a prison commitment target and reducing recidivism.
- ▣ Funds could be used for treatment, stronger probation, electronic monitoring, prevention, problem-solving policing, and victim mediation and services.



Strengthen Probation: Demand Results

- Illinois and Arizona have passed performance-based probation funding measures providing departments with incentive funding for fewer commitments, fewer new crimes, and more restitution.
- Arizona measure led to 31% decline in new crimes and 28% drop in revocations.



The Earned Time Revolution

- ▣ States such as Georgia, Texas, and Ohio have recently adopted or expanded earned time for lower –level offenders.
- ▣ ALEC model legislation and pending bill by Senators Cornyn & Whitehouse.
- ▣ Studies of policies in New York, Wisconsin, and Washington find reduced recidivism as offenders have incentive to complete rehabilitative programs.



Strengthening Supervision

- ▣ Bolster graduated sanctions and incentives
- ▣ Enhance use of risk/needs assessments to match offenders with programs
- ▣ FL. Study: GPS monitored probationers were 89% less likely to be revoked
- ▣ Address waiting list for substance abuse and mental health treatment, consider non-narcotic pharmaceuticals for heroin and alcoholism.



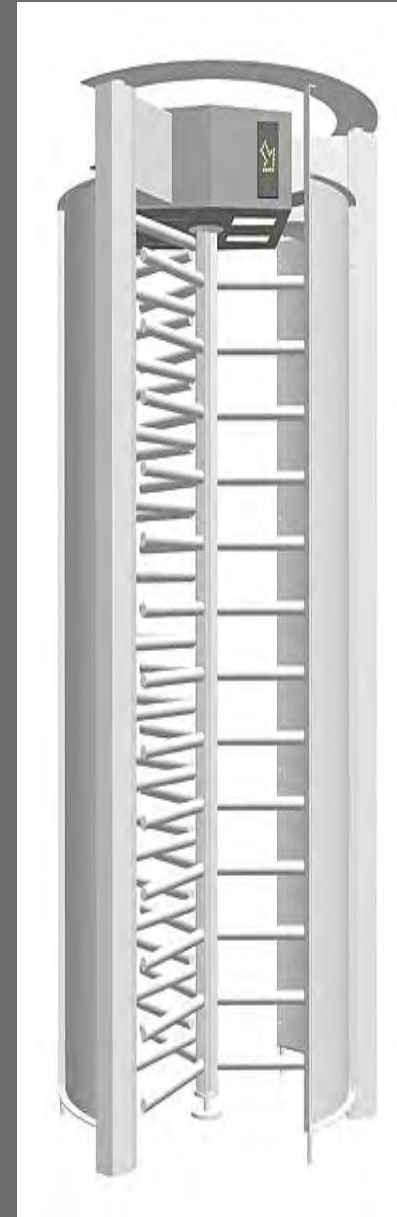
Expand Post-Release Supervision

- ▣ 2014 Pew study: 11,280 Texas inmates released without supervision each year.
- ▣ Pew 2013 New Jersey study found similar inmates put on parole had 36% fewer new offenses than max-outs. Promotes continuity of care for mentally ill.
- ▣ Use some savings from reduced time served to expand post-release supervision



Stop the Revolving Door

- Employed offenders on supervision twice as successful
- In-prison vocational training = 9% less re-offending
- Grant occupational licenses when offense is unrelated to the job. In some states, drug possession disqualifies a prospective barber. 2009 TX. law and ALEC model bill allow many ex-offenders to obtain a provisional license for most trades, which becomes permanent if they comply with law and rules.



Remove Barriers to Reentry

- ▣ Recent Texas laws provide immunity to employers who hire ex-offenders and to landlords who rent to them.
- ▣ Enable nonviolent, non-chronic ex-offenders after time of compliance to obtain non-disclosure of record, which still allows prosecutors and judges access.



Prioritizing Victims



- Nationally, restitution ordered in only 26% of property cases – a third collected.

Making Victims Whole

- ▣ Probationers pay \$391 million in restitution (at least 34 times more per offender than inmates) and do 135 million service hours.
- ▣ Victim mediation: 14 states with statutes. Must be chosen by victim & offender. Proven to increase victim satisfaction as a result of apology and completion of restitution in 89% of cases. Most studies find less re-offending as well.



The Victims' Perspective

Survey of Iowa Burglary Victims

Sanction	Percent Requesting
Restitution	81.4%
Community Service	75.7%
Pay Fine	74.3%
Regular Probation	68.6%
Treatment/Rehabilitation	53.5%
Intensive Probation	43.7%
Short Jail Term	41.4%
Boot Camp	40.0%
Work Release Facility	34.3%
Prison Sentence \geq Year	7.1%

Other Issues to Weigh

- Civil asset forfeiture reform
- Solitary confinement (stop direct release)
- Wrongful convictions and indigent representation (TX voucher pilot)
- Pushing back on overfederalization (SORNA and suspending driver's licenses)
- Protecting policing advances, e.g. bkwindows
- Juv. justice (status offenses/zero tolerance)
- Ensuring faith-based programs can be used



Key Resources

▣ Heritage Foundation

www.overcriminalized.com

▣ ALEC (including model legislation)

www.alec.org

▣ Pew Public Safety

Performance Project

www.pewcenteronthestates.org

▣ Council of State Governments

www.csgjusticecenter.org

▣ Prison Fellowship

www.prisonfellowship.org

▣ TPPF & Right on Crime

www.texaspolicy.com, www.rightoncrime.com

